IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.MC.No. 3901 of 2006()

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CC.233/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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PETITIONER: ACCUSED 1 TO 10

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1. PUNNARA VEETTIL ACHUTHAN, S/O. BAPU,
   AGED 56 YEARS, ABHI NIVAS, PERINGATHUR AMSOM,
   KIDHANHI DESOM.

2. M.K.VINOD, S/O. KUNHIRAMAN,
   AGED 36 YEARS, MOORAKKUDI HOUSE,
   PERINGATHUR AMSOM, KIDHANHI DESOM.

3. MOORAKKUDI SANTHA, W/O. ACHUTHAN,
   AGED 48 YEARS, ABHI NIVAS, PERINGATHUR AMSOM,
   KIDHANHI DESOM.

4. VINEESH, S/O. ACHUTHAN, AGED 24 YEARS,
   ABHI NIVAS, PERINGATHUR AMSOM, KIDHANHI DESOM.

5. RAVINDRAN, S/O. KUNHIRAMAN,
   AGED 34 YEARS, MOORAKKUDI HOUSE,
   PERINGATHUR AMSOM, KIDHANHI DESOM.

6. CHANDRAN, S/O. KANARAN, AGED 35 YEARS,
   MANOKOTH HOUSE, PERINGATHUR AMSOM,
   KIDHANHI DESOM.

7. SUDHEESH BABU, S/O. DHAMU,
   AGED 23 YEARS, MANIKOTH MEETHAL HOUSE,
   PERINGATHUR AMSOM, KIDHANHI DESOM.

8. SHAJI, S/O. KUNHIRAMAN, AGED 28 YEARS,
   MOORAKKUDI HOUSE, PERINGATHUR AMSOM,
   KIDHANHI DESOM.

9. RAJEEVAN, S/O. RAJAN, AGED 19 YEARS,
   MANIKOTH MEETHAL HOUSE, PERINGATHUR AMSOM,
   KIDHANHI DESOM.

10. PURUSHU, S/O. KELAPPAN, AGED 28 YEARS,
THACHALAKATH THAZHE KUNIYIL PERINGATHUR
AMSOM, KIDHANHI DESOM.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.K.VISWAN

RESPONDENTS: FORMAL PARTY & COMPLAINANT
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1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
CHOKLI POLICE STATION, THALASSERY.

BY P.P. SRI. K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**CRL.M.C.NO. 3901 OF 2006**

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**Dated this the 4th day of December, 2006**

**ORDER**

The petitioners are accused 1 to 10 in a prosecution, inter alia, under Sec.135(1)(a) of the Indian Electricity Act. Cognizance has been taken by the learned Magistrate against the petitioners for the offences punishable, inter alia, under Sec.135(1)(a) of the Indian Electricity Act and Secs.143, 147 and 353 read with Sec.149 of the IPC.

2. The crux of the contentions of the petitioners is that cognizance of the offence punishable under Sec.135(1)(a) of the Indian Electricity Act is legally unsustainable and void inasmuch as the complaint has not been filed by the specified officer. The learned counsel for the petitioners relies on the decision of this Court in Crl.M.C.No.2910/05 dated 10/11/2006.

3. I find force in the submission that the cognizance of the offence under Sec.135(1)(a) of the Indian Electricity Act is not justified. Of course, it is for the learned Magistrate to consider and pass appropriate orders regarding framing of

charges. The learned counsel for the petitioners submits that in so far as the 1st petitioner is concerned, there is no allegation of having committed any other offence also. Of course, the final report does not make that position very clear. I am satisfied, in these circumstances, that the petitioners can be permitted to raise all their contentions at the stage of Sec.239/240 of the Cr.P.C. I find force in the submission of the learned counsel for the petitioners that the 1st petitioner may be permitted to appear through counsel till the court takes a decision on the question of framing charge.

4. In the result:

(a) This Crl.M.C. is allowed in part.

(b) The learned Magistrate is directed to consider the question whether charges deserve to be framed against all the accused for the offences alleged including the offence punishable under Sec.135(1)(a) of the Indian Electricity Act.

(c) In the peculiar facts and circumstances of this case, I further direct that the personal presence of the 1st accused/1st petitioner before the learned Magistrate need be insisted if and only if the court finds that any charges are liable to be framed against him. Till then, he will be permitted to appear through counsel.

**Sd/-**

**Nan/** **(R. BASANT, JUDGE)**

**//true copy//** **P.S. To Judge**